

October 8, 2015

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Notice of Ex Parte Presentation

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: WC Docket No. 12-375, Inmate Calling Service

Dear Ms. Dortch:

On October 6, 2015, Vincent Townsend, President of Pay Tel Communications, Inc. ("Pay Tel"), Don J. Wood, economic consultant to Pay Tel, and Marcus Trathen of Brooks, Pierce, McLendon, Humphrey & Leonard, LLP, regulatory counsel to Pay Tel, met with Commissioner Mignon Clyburn, Rebekah Goodheart, Legal Advisor to Commissioner Clyburn, Gigi Sohn, Counselor to Chairman Wheeler, and Lynne Engledow, Acting Deputy Division Chief, Pricing Policy Division, Wireline Competition Bureau.

Pay Tel based its discussion on the Fact Sheet released by the FCC summarizing an item to be considered by the FCC at its October 22 meeting regarding reform of inmate calling services ("ICS"). Pay Tel stated its belief that, in general, the Fact Sheet proposes regulations that will advance the public interest through the regulation of ancillary fees, establishment of a tiered rate structure, and application of the rules to intrastate ICS. However, Pay Tel also stated its concern that the Fact Sheet stops short of articulating a comprehensive, rational and sustainable approach to reform of ICS.

Pay Tel discussed two primary substantive concerns with the Fact Sheet: first, the Fact Sheet suggests that the FCC intends to exclude the costs of site commissions in establishing rate caps but does not intend to restrict ICS providers' sharing of "profits" "if such payments fit within the rate caps"; and, second, the proposed rate caps for jails would prescribe caps which are below Pay Tel's demonstrated costs for the 350-999 and 1000+ tiers. Pay Tel explained that the second concern is exacerbated by the first; that is, the below-cost price caps are made even more problematic in an environment where Pay Tel, apparently, would be expected to pay a percentage of its revenues to confinement facilities. Such a regulatory environment would not be sustainable for companies like Pay Tel that are committed to ethical business practices.

As illustrated by the explosion of “single-call” programs and the emergence of video visitation, vendors can readily put in place mechanisms to divert family funds from calling to other activity where funds can be siphoned off. If the underlying forces at work are not changed or eliminated, facilities and providers will continue to be incented to come up with new ways to move inmate families’ money to areas outside the FCC’s regulatory oversight and control so as to maximize their financial benefit. In particular, Pay Tel identified several “work arounds” that could result in denial of the benefits of ICS reform to consumers. Providers could divert consumer funds to affiliated payment processors that assess fees above the regulated rate; providers could impose excessive fees for access to trust account or commissary account funds; facilities and providers could steer inmate calling traffic to arguably unregulated technologies such as video chats, emails, texting and tablets and assess rates above the regulated rates. The net effect would be to (1) ensure that rates charged to consumers never fall below the maximum authorized rates, and (2) that facilities and providers are incented to find new ways to divert consumer funds away from regulated fees and services.

Pay Tel discussed its belief that a better approach would be to prescribe a facility cost recovery fee that is added as an explicit component of ICS rates, as part of a regulatory structure that prohibits providers from paying other forms of compensation. Such an approach would help to align the interests of facilities with consumers by incenting facilities to enter into contracts with lower calling rates in order to stimulate increased phone usage, thereby spurring healthy competition among providers that will benefit of consumers. Pay Tel explained that other options, such as leaving site commission payments untouched and “letting providers and facilities work it out,” will perpetuate the flawed system that has led to the current proceeding. The Commission has already concluded that the existing system of facility compensation is “the primary reason” for the dysfunctional ICS ecosystem¹ – and that the market dysfunction only accelerated after adoption of the regulatory reforms in the Commission’s 2013 Order that lowered rates but otherwise did not reform the system of facility compensation.² A perpetuation of this system is illogical and not supported by the record; more problematic, as demonstrated by the Commission’s experiences to date, it will yield unsatisfactory results for consumers.³

¹ *Rates for Interstate Inmate Calling Services*, Second Further Notice of Proposed Rulemaking, 29 FCC Rcd 13170, 13180, at ¶ 21 (2014) (“Second Further Notice”).

² *Id.* at ¶ 20.

³ Alternatively, the Commission could potentially consider the adoption of an explicit facility cost recovery fee without prohibiting site commissions, provided the Commission concurrently made abundantly clear—in a manner at least consistent with its prior position—that site commission payments could only be paid out of profits associated with the provision of ICS in a particular facility and could not be borne by consumers. *See, e.g.*, FCC, Public Notice, “Wireline Competition Bureau Addresses The Payment Of Site Commissions For Interstate Inmate Calling Services,” DA 14-1206, WC Docket No. 12-375 (Aug. 20, 2014) (explaining that site commissions are “not costs that are reasonably and directly related to the provision of ICS” and that payment of site commissions out of interstate rates could result in lowering rates and/or refunds to customers).

In addition to the above, Pay Tel noted that the Fact Sheet was not clear as to whether a separate “biometrics fee” would be permissible as an additive to the rate caps. The Commission previously adopted rate caps that were inclusive of a biometrics technology fee based on a cost study that separately accounted for this additive cost.⁴ In its cost study which formed the basis for the Commission’s approval of the biometric fee, Pay Tel reported as a line item third-party expenses for biometric analysis of 1.93 cents per minute.⁵ The costs Pay Tel reported in response to the Mandatory Data Collection, however, did not include this 1.93 cents per minute payment to the outside vendor. To the extent that the Fact Sheet should be read to preclude the “pass through” of the third party charge for this technology, the prescribed price caps would be even further below Pay Tel’s actual costs of providing ICS, particularly in the 350-999 and 1000+ tiers.

In accordance with Section 1.1206 of the Commission’s rules, this letter is submitted for inclusion in the record of the above-captioned proceeding.

Please do not hesitate to contact the undersigned should any questions arise concerning this notice.

Sincerely yours,

/s/ Marcus W. Trathen

Marcus W. Trathen

cc: Commissioner Mignon Clyburn (via email)
Rebekah Goodheart (via email)
Gigi Sohn (via email)
Lynne Engledow (via email)

⁴ See *Rates for Interstate Inmate Calling Services*, Report and Order, 28 FCC Rcd 14107, 14139, ¶ 58 (2013) (“Our interim rate caps are based on cost studies that include the cost of advanced security features such as continuous voice biometric identification”) (citing to Pay Tel’s July 2013 Cost Summary); Second Further Notice, at ¶ 60 (citing to Pay Tel’s July 2013 Cost Summary).

⁵ Letter from Marcus W. Trathen, Counsel for Pay Tel Communications, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 12-375, Attachment, “Pay Tel Communications, Inc. Inmate Calling Services Cost Presentation,” at Workpapers Section A, p.1, Workpapers Section B, p. 1-2 (July 23, 2013).